

ORIGINAL



0000052211

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER – Chairman
WILLIAM A. MUNDELL
MARC SPITZER
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KRISTIN K. MAYES

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AZ CORP COMMISSION
DOCUMENT CONTROL

ARIZONA WATER COMPANY, an Arizona
corporation,

Complainant,

vs.

GLOBAL WATER RESOURCES, LLC, a foreign
limited liability company; GLOBAL WATER
RESOURCES, INC., A Delaware corporation;
GLOBAL WATER MANAGEMENT, LLC, a
foreign limited liability company; SANTA CRUZ
WATER COMPANY, LLC, an Arizona limited
liability corporation; PALO VERDE UTILITIES
COMPANY, LLC, an Arizona limited liability
corporation; GLOBAL WATER – SANTA CRUZ
WATER COMPANY, an Arizona corporation;
GLOBAL WATER – PALO VERDE UTILITIES
COMPANY, an Arizona corporation; JOHN AND
JANE DOES 1-20; ABC ENTITIES I – XX,

Respondents.

DOCKET NO. W-01445A-06-0200
SW-20445A-06-0200
W-20446A-06-0200
W-03576A-06-0200
SW-03575A-06-0200

GLOBAL'S

MOTION TO DISMISS

AND

ANSWER

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Respondents (collectively, "Global") move that the Commission dismiss the complaint of Arizona Water Company ("AWC"). Following the motion to dismiss is a formal answer to the complaint. The answer and motion to dismiss have been combined in one document as required by A.A.C. R14-3-106(H).

I. Preliminary Statement.

AWC raises three claims. Each of these claims is unfounded. Even if the factual allegations in AWC's complaint are taken as true, each of AWC's claims is without merit as a matter of law. Accordingly, AWC's complaint should be dismissed.

First, AWC claims that the Commission should declare that the Global Entities¹ which do not hold CC&Ns (the "Unregulated Global Companies") are public service corporations. But the Unregulated Global Companies do not provide water or wastewater service to the public, and they are therefore not public service corporations as defined in the Arizona Constitution. Moreover, the use of holding companies and other affiliates is common in the water industry. The Commission has never declared such companies to be public service corporations.

Second, AWC claims that certain Infrastructure Coordination and Financing Agreements ("ICFA") should be declared unlawful and that Global's Public Private Partnership ("P3") agreements with the Cities of Casa Grande and Maricopa should also be declared unlawful. AWC further claims that certain payments under the ICFAs and P3s should be treated as unauthorized rates.

With regard to the ICFAs, these agreements are merely a financing tool which place the standards and resource planning squarely in the hands of Global, rather than the developers. By allowing the infrastructure planning and resource development to be managed by Global, substantial long-term benefits are achieved, including: regionalization; rate stability; and risk protection. Uniquely, they accomplish this goal without imposing a cost to the customer. Further,

¹ Except as otherwise defined herein, each defined term has the meaning given it in AWC's Complaint.

1 the ICFAs operate solely at the holding company level – the regulated subsidiaries are not parties to
2 them, and do not receive any of the payments under the ICFAs.

3 With regard to the P3s, these agreements were considered and adopted by the Cities of Casa
4 Grande and Maricopa after full and open deliberation by the City Councils. The cities consider the
5 P3s to be an important part of their strategy for managing growth. Moreover, the P3s provide for
6 close co-operation between the cities and the utility companies serving the city, and such co-
7 operation is in the public interest. As a matter of comity, the Commission should not second-guess
8 the cities' decision to enter into the P3s.

9 The P3s do provide for a payment by Global Water Resources, LLC ("Global Parent") to
10 the cities. The P3s contemplate that under certain circumstances, this payment may be passed-
11 through to the customers by the regulated subsidiaries. But the P3s also expressly provide that this
12 charge may not be assessed to customers without Commission approval. The regulated subsidiaries
13 have not sought such Commission approval, and therefore they have not passed these charges on to
14 customers. Instead, as a matter of policy, Global Parent has decided to cover these charges from its
15 own resources for the time being. Because no charges are being passed on to customers, the P3
16 charges are not rates.

17 **Third**, AWC asserts that the Commission should prohibit Global from talking to any
18 landowners within AWC's CC&N area (apparently, even for wastewater service), and should also
19 prohibit Global from talking to any landowners in a large but undefined area of Pinal County that is
20 outside of AWC's CC&N. In effect, AWC is asking the Commission to preclude competition in a
21 vast area of AWC's own choosing. But under Arizona law, it is the Commission which selects
22 service providers through the CC&N process. AWC's attempt to limit the Commission's choices
23 should be rejected.

24 Even with respect to the areas within AWC's CC&N, AWC's proposal is far too broad. It
25 ignores many legitimate topics of discussion between Global and the landowners. For example,
26 AWC declines to provide wastewater and reclaimed water services. Global's regulated subsidiaries
27 can provide these services. Likewise, Global could finance or construct facilities demanded by

1 AWC under AWC's main extension agreements. Further, Global can work with landowners to find
2 some accommodation that is acceptable to both AWC and Global. Thus, AWC's claim is
3 unfounded.

4 Finally, a prohibition on speech, as proposed by AWC, is contrary to the tradition of free
5 speech so valued by our nation and state. These traditions are codified in the United States and
6 Arizona Constitutions through the rights of petition and free speech. For these reasons, AWC's
7 third claim should be dismissed.

8 **II. Legal Standards.**

9 Motions to dismiss are a well-recognized procedural mechanism for tribunals such as the
10 Commission to dispose of meritless complaints. *See* Arizona R.Civ.Pro. 12(b), incorporated by
11 reference in A.A.C. R14-3-101(A) and R14-3-106(K). Indeed, Motions to Dismiss are specifically
12 recognized by the Commission's rules. A.A.C. R14-3-106(H).

13 When evaluating a motion to dismiss, the tribunal "accepts the well-pleaded facts alleged in
14 the complaint as true." *Jeter v. Mayo Clinic Arizona*, 467 Ariz. Adv. Rep. 5 ¶ 4, 121 P.3d 1256,
15 1259 (App. 2005). But the tribunal will "not accept as true allegations consisting of conclusions of
16 law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable
17 inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts." *Id.*
18 Thus, the Commission is free to draw its own inferences from the alleged facts, and the
19 Commission interprets the applicable law independently.

20 The ICFA and P3 attached to AWC's complaint are considered part of the complaint.
21 Ariz.R.Civ.Pro. 10(c). The Commission can therefore consider the terms of these agreements in
22 evaluating the motion to dismiss. *See Young v. Bishop*, 88 Ariz. 140, 144, 353 P.2d 1017, 1019
23 (1960).

1 **III. The Unregulated Global Companies are not public service corporations.**

2 **A. The Unregulated Global Companies are not alter egos of the regulated**
3 **subsidiaries.**

4 **1. *The use of holding companies is normal and is not grounds for an alter ego***
5 ***finding.***

6 AWC's complaint repeatedly asserts that the Unregulated Global Companies are
7 "conducting business as public service corporations", and are the "alter egos" of the regulated
8 subsidiaries. *See e.g.* AWC Complaint at ¶¶ 11, 25. These are legal conclusions that can not be
9 presumed true in evaluating a motion to dismiss. Instead, the Commission should look to the
10 factual allegations of the complaint to see if they support the legal claims made by AWC. AWC
11 makes much of the "web of interlocking companies like the Global Entities." AWC Complaint at ¶
12 27. AWC also describes the corporate structure of Global in some detail.

13 Although AWC makes much of Global's use of holding companies and other affiliates,
14 AWC does not allege facts that would support treating the Unregulated Global Companies as alter
15 egos of the regulated subsidiaries. For example, AWC does not allege that the regulated
16 subsidiaries are undercapitalized or that Global has disregarded corporate formalities. *See*
17 *Deutsche Credit Corp. v. Case Power & Equipment Co.*, 179 Ariz. 155, 160, 876 P.2d 1190, 1195
18 (App. 1994)(noting that disregarding corporate formalities and undercapitalization are the grounds
19 for an alter ego finding)(quoting *Ize Nathan Bagowa, Ltd. v. Scalia*, 118 Ariz. 439, 577 P.2d 725
20 (App. 1978)). In the absence of such allegations, a utility holding company will not be treated as
21 the alter ego of the utility. *See Arizona Public Service Co. v. Arizona Corp. Comm'n*, 155 Ariz.
22 263, 267, 746 P.2d 4, 8 (App. 1987)(in absence of evidence of undercapitalization or fraud, parent
23 of APS would not be treated as alter ego of APS), *vacated in part on other grounds*, 157 Ariz. 532,
24 536, 760 P.2d 532, 536 (1988). AWC's failure to make these allegations is not surprising, as there
25 is no basis for AWC to even allege such facts. For example, SCWC and PVUC are among the best
26 capitalized water and wastewater companies in Arizona, as their capital structure is 100% equity.²

27 ² This is shown on the 2005 Annual Reports recently submitted by SCWC and PVUC.

1 In the absence of allegations of undercapitalization or disregard of corporate formalities, there is no
2 support for Count One of AWC's complaint, and this count should be dismissed.

3 While AWC tries to make Global's use of affiliates sound sinister, in fact, there is nothing
4 unusual about a large or medium sized water utility using holding companies and other affiliates.
5 For example, Arizona-American Water Company is owned by American Water, which is in turn
6 owned by Thames Water, which is owned by RWE Group. Likewise, AWC itself has several
7 holding companies – it is owned by Utility Investment Company, Inc., which is owned by United
8 Resources, Inc. Tellingly, AWC is not arguing that its own holding companies should be treated as
9 public service corporations. A chart showing water utility holding companies in Arizona, compiled
10 from Commission records, is attached as Exhibit A³. There is simply nothing unusual or
11 remarkable about Global's corporate structure. For convenience, the corporate structure of Global
12 as alleged by AWC is shown on Exhibit B. (Global' actual corporate structure is shown on Exhibit
13 C.)⁴

14 Moreover, the Commission enacted rules that govern holding companies and other affiliates
15 of public service corporations. *See* A.A.C. R14-2-801 *et seq.* These rules were passed after
16 extended and thorough consideration by the Commission, and have been affirmed by the Arizona
17 Supreme Court. *See Arizona Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286, 288-292, 830
18 P.2d 807, 809-813 (1992)(noting historical background and procedural history of rules). They
19 represent the Commission's considered view of the appropriate level of regulation for utility
20 holding companies. There is no reason to disregard these rules and apply greater regulation.

21 Global is not currently subject to the rules because none of the regulated subsidiaries are
22 "Class A" utilities. A.A.C. R14-2-802(A). By this rule, the Commission has determined that only
23 holding companies and affiliates of Class A utilities should be regulated. Since Global is not
24

25 ³ The Commission may take official notice of these matters under A.A.C. R14-3-109(T).

26 ⁴ As noted in Global's Answer, AWC's description of Global's corporate structure is
27 erroneous in several respects. But in considering the Motion to Dismiss, the Commission must
accept these factual allegations as true, even though they are demonstrably wrong. Exhibit C is
provided for informational purposes only.

1 subject to the rules at this time, no further regulation is warranted. However, Global notes that if
2 current trends continue, it expects that at least one of the regulated subsidiaries will become a Class
3 A utility by the end of the year. At that time, all of the Unregulated Global Companies will be
4 subject to the requirements of A.A.C. R14-2-801 *et seq.* In the meantime, Global will continue its
5 policy of keeping the Commission apprised of all material events affecting Global.

6 **2. The ICFA does not support an alter ego finding.**

7 AWC also points to provisions of the ICFAs. However, the Commission need not accept
8 AWC's characterization of the ICFAs. Because AWC incorporated an ICFA into its complaint, the
9 Commission can examine it directly to see if it supports AWC's claims. *See Young, supra.*

10 The actual ICFA shows that it is carefully structured to separate the roles of Global Parent
11 and the regulated subsidiaries. For example, the ICFA states that Global Parent is the owner of the
12 regulated subsidiaries and provides them with equity. AWC Complaint, Ex. 1, at Recital A. Under
13 the ICFA, Global Parent provides services to landowners, such as financing and planning
14 infrastructure. *Id.* In contrast, the ICFA clearly states that it is the regulated subsidiaries which
15 provide water and wastewater service to ratepayers. *Id.*, Recital C. Moreover, the ICFA
16 contemplates the coordination of a host of other services unrelated to the regulated subsidiaries,
17 such as cable television and internet services. *Id.*, Recital A and ¶ 1. Under the ICFA, Global
18 Parent acts as the agent of the landowner in requesting service. *Id.*, Recital D. The ICFA provides
19 that the landowner must enter into separate main extension agreements with the regulated
20 subsidiaries. *Id.* at ¶ 2. Thus, the roles of Global Parent and the regulated subsidiaries are kept
21 strictly separate. There is no basis in the ICFA to find that corporate formalities are not being
22 observed, or that the regulated subsidiaries are not well capitalized. There is therefore no basis for
23 a finding that the Unregulated Global Subsidiaries are alter egos of the regulated subsidiaries.

24 **B. The Unregulated Global Companies are not public service corporations.**

25 The Arizona Constitution defines public service corporations as all "corporations other than
26 municipal engaged in furnishing... water for irrigation, fire protection, or other public purposes...
27 or engaged in collecting, transporting, treating, purifying and disposing of sewage through a

1 system, for profit.” Ariz. Const. Art. XV § 2. AWC does not allege that the Unregulated Global
2 Companies actually furnish water or collect, transport, treat, purify or dispose of sewage. And as
3 noted above, the ICFA is careful to separate the roles of Global Parent and the regulated
4 subsidiaries. A corporation must meet the literal definition in § 2 in order to be subject to the
5 Commission’s jurisdiction. *Southwest Gas Corp. v. Arizona Corp. Comm’n*, 169 Ariz. 279, 818
6 P.2d 714 (App. 1991).⁵ Because the Unregulated Global Subsidiaries do not meet the definition,
7 they are not public service corporations.

8 Accordingly, AWC’s claim that the Unregulated Global Companies are public service
9 corporations or alter egos of the regulated subsidiaries should be dismissed.

10 **C. The Commission does not have jurisdiction over the Unregulated Global**
11 **Companies.**

12 Because the Unregulated Global Companies are not public service corporations, the
13 Commission does not have jurisdiction over them, and they should be dismissed as Respondents in
14 this case.⁶ The Commission’s power, with a few exceptions not relevant here,⁷ extends only to
15 public service corporations. *See* Ariz. Const. Art. XV §§ 3, 16. The Commission has no power
16 over other companies, and even the legislature cannot enlarge the Commission’s powers to
17 encompass companies which are not public service corporations. *Rural/Metro Corp. v. Arizona*
18 *Corp. Comm’n*, 129 Ariz. 116, 117-18, 629 P.2d 83, 84-85 (1981). Moreover, AWC’s complaint is
19 based on A.R.S. § 40-246. *See* AWC Complaint at ¶ 16. But that statute only allows complaints to
20

21 ⁵ Meeting the textual definition, while necessary, is not sufficient to be considered a public
22 service corporation. A company that meets the textual definition must also meet the limits imposed
23 by case law, especially the so-called *Serv Yu* test. *Southwest Gas, supra*. Global reserves the right
to raise these other limits at a later point in this case.

24 ⁶ Further, it is not clear that the Commission, rather than the courts, has authority to decide
the status of the Unregulated Global Companies in the first instance. Global reserves the right to
25 raise this argument, should the need arise.

26 ⁷ The Commission had the power to “inspect and investigate” corporations that offer their
stock to the public. Ariz. Const. Art. XV § 4. AWC does not allege that Global offers its stock to
27 the public. The Commission also has sole power to issue certificates of incorporation. Ariz. Const.
Art. XV § 5. These additional powers are not relevant to this dispute.

1 be filed against public service corporations, and not other companies. *See* A.R.S. § 40-246(A).
2 Thus, under both the Arizona Constitution and Title 40, the Commission cannot entertain a
3 complaint against companies which are not public service corporations. Accordingly, the
4 Unregulated Global Companies should be dismissed as respondents in this case.

5 **IV. The ICFAs and P3s do not contemplate unauthorized rates.**

6 **A. The ICFA fees are not rates or hook up fees.**

7 AWC alleges that the ICFA fees are illegal rates. But the ICFA fees are not rates at all. The
8 ICFAs clearly provide for services to the landowners, not ratepayers. AWC Compliant at Ex. 1,
9 Recital A. The landowners do not receive even a drop of water under the ICFAs. The ICFAs
10 clearly state that the regulated subsidiaries provide water and wastewater services under their
11 CC&Ns issued by the Commission. AWC Complaint, Ex. 1 at Recital C. The ICFAs thus do not
12 concern water or wastewater rates. Instead, the ICFAs provide for Global Parent to provide
13 coordinating and financing services to landowners, not utility customers. AWC Complaint, Ex. 1,
14 Recital G and ¶¶ 1 and 3.

15 Next, AWC claims that the ICFA constitutes an unauthorized hook-up fee. AWC
16 Compliant at ¶¶ 38-39, 53. But the ICFA fee has none of the characteristics of a hook-up fee.
17 Indeed, there are a host of differences.

18 **First**, Hook-up fees typically pay for off-site facilities. The ICFA fees do not pay for
19 facilities, but instead only pay for the carrying costs of the facilities. AWC Complaint, Ex. 3 at
20 Recital G. In short, the ICFA is about financing, not construction and not rates. If this arrangement
21 was with a bank or insurance company, it would not be subject to Commission oversight. The
22 ICFA is clearly a financing mechanism, not a fee for construction of facilities. The ICFA states
23 that the fees “represent an approximation of the carrying-costs associated with the interest and
24 capitalized interest associated with the financing of infrastructure.” AWC Complaint, Ex. 1 at
25 Recital G. The parties to the ICFA were clear about their intent: “Nothing in this Agreement
26 should be construed as a payment of principal, a contribution or advance to the utilities” and there
27 will be “no repayment of any kind or nature in the future.” *Id.*

Second, hook-up fees are charged by utilities. The ICFA fee is charged by the holding company. *Id.* ¶ 4.

Third, the fees are due at different times. Hook-up fees are typically due at the time service is established or at the time a main extension is executed. *See e.g.* AWC Tariffs HU-259 and HU-279. In contrast, portions of the ICFA fee are due at different triggering events, such as approval of the CC&N and final plat approval or recordation. Thus, ICFA fees may be paid long after service is established and in fact may never be paid if the land never receives final plat approval. Moreover, the ICFA fee is paid by developers, while hook-up fees are due either from ratepayers or developers. A ratepayer will never have to pay the ICFA fee.

Fourth, and most fundamentally, the ICFA fee is entirely voluntary. Developers are free to enter into traditional main extension agreements (MXA) with the regulated subsidiaries without ever signing an ICFA or ever paying an ICFA fee. Tellingly, AWC does not allege that any Developer has ever been denied a MXA due to failing to sign an ICFA. Developers sign the ICFA because they conclude it is in their financial interest to do so, given the favorable financing terms offered by Global. In sharp contrast, hook up fees are mandatory.

In short, the ICFA fee is not like a hook up fee. The differences can be summarized in the following chart:

Category	Hook up Fee	ICFA Fee
Purpose	Build Facilities	Financing Option
Mandatory / Voluntary	Mandatory	Voluntary
Due date	MXA or service establishment	Staggered
Paid to	Utility	Holding Company

B. The ICFAs are in the public interest.

ICFAs provide a mechanism to meet many of the Commission's policy goals regarding water and wastewater companies. Indeed, the ICFAs provide numerous benefits and also provide a means of avoiding many of the problems of such companies.

1 **First**, the ICFAs are very beneficial to the regulated subsidiaries and the ratepayers. The
2 ICFAs allow for regional master planning. Typical MXAs result for development-by-development
3 planning. By using regional master plans for water, wastewater and reclaimed water, Global is able
4 to achieve economies of scale, because facilities are built to serve large areas, not specific
5 developments. Moreover, redundant line placements can be eliminated, and reliance on force
6 mains and lift stations can be reduced. These efficiencies will ultimately be reflected in the cost of
7 service to the ratepayer and a material reduction in water consumption for the region through
8 conservation from water reclamation and reuse.

9 **Second**, the ICFAs shield the regulated subsidiaries, and thus the ratepayers, from risk. If
10 development does not occur as fast as predicted, the holding company takes the hit, not ratepayers
11 or the regulated subsidiaries.

12 **Third**, Staff has expressed concern about the dangers of excessive reliance on
13 Contributions-in-Aid-of-Construction ("CIAC") and Advances-in-Aid-of-Construction ("AIAC").
14 The danger occurs because companies take the easy money of CIAC and AIAC to build facilities,
15 but end up with little or no rate base because CIAC and AIAC are credited against rate base. With
16 minimal rate base, the utility's rates will be set to barely cover the costs of operations. The utility is
17 thus without any financial cushion, and cannot survive adverse events. Companies that have relied
18 too heavily on CIAC and AIAC often end up without the ability to seek or qualify for financing.
19 Hook up fees result in CIAC, and standard MXAs result in both AIAC and CIAC. In contrast, the
20 ICFAs do not result in CIAC or AIAC. The dangers of excessive CIAC will never be avoided if
21 every alternative is "imputed" as CIAC.

22 **Fourth**, ICFA fees can be used to pay for acquisitions. There are hundreds of small water
23 companies in Arizona. The Commission and Staff favor consolidation of these companies to (1)
24 promote economies of scale; (2) gain better access to debt and equity capital; (3) and to get
25 sophisticated, capable operators in place. Yet the economics of acquisitions are often unattractive,
26 especially as the Commission does not allow acquisition adjustments. The ICFAs present an
27

1 alternative means of financing acquisitions. Here the developers and Global's shareholders pay,
2 rather than the ratepayers. The ratepayers pay nothing yet gain the three advantages noted above.

3 **Fifth**, the ICFA fees can also fund other beneficial actions. The ACC has often expressed
4 reluctance to allow charges for CAP Allocations or Central Arizona Groundwater Replenishment
5 District (CAGRD) fees and enrollment costs into rates unless they are immediately used and useful.
6 Yet there is no doubt that in the long term, such costs are prudent. The ICFAs allow these costs to
7 be shifted to developers, so that ratepayers will not be responsible for them.

8 In sum, the ICFAs achieve economies of scale and regional planning, promote water
9 conservation, remove developer controls on infrastructure planning, shield ratepayers from risk and
10 place some of the costs of development on the developer. They also result in financially stable
11 utilities without excessive reliance on CIAC and AIAC. They can also be used to promote
12 acquisitions. The ICFAs are therefore in the public interest. Because the ICFAs are neither rates
13 nor hook up fees, and because they are in the public interest, AWC's ICFA claims should be
14 dismissed.

15 **C. This is the wrong docket to review the ICFA fees.**

16 The Commission has established a generic docket to evaluate "non-traditional" financing
17 mechanisms such as ICFAs. *See In the matter of the Commission's generic evaluation of the*
18 *regulatory impacts from the use of non-traditional financing arrangements by water companies*
19 *and their affiliates*, Docket No. W-00000C-06-0149. Indeed, it is Global's understanding that the
20 ICFAs were one of the main reasons this docket was established. AWC should not be able to
21 thwart this Commission-established process by forcing the issues to be decided in a docket and
22 manner of its own choosing, potentially without the participation of important parties. The generic
23 docket is a superior vehicle to resolve the ICFA issues because it will allow the participation of
24 Staff and other parties (such as RUCO) who are not directly interested in this dispute.

25 **D. The P3 are in the public interest.**

26 AWC alleges that the P3s "provide a financial incentive to neighboring municipalities" to
27 act "in complete disregard for the public interest." AWC Complaint at ¶ 55. AWC further alleges

1 that the P3 fees represent a "bounty... to curry financial favor with the municipalities" resulting in
2 an agreement by the cities to "subvert the public interest" and to take part in a "concerted scheme...
3 to avoid compliance with Arizona law." AWC Compliant at ¶ 42. Such baseless attacks on public
4 officials should not be tolerated, especially when they are trying to meet regional planning
5 objectives contemplated by statute. Public officials are accorded a "presumption of honesty and
6 integrity." *Withrow v. Larkin*, 421 U.S. 35, 47 (1975); *Ison v. Western Vegetable Distributors*, 48
7 Ariz. 104, 120, 59 P.2d 649, 656 (1936)("the law assumes public officers will do their duty");
8 *Rouse v. Scottsdale Unified School Dist.*, 156 Ariz. 369, 373-74, 752 P.2d 22, 26-27 (App. 1987)(if
9 anything, presumption is stronger with regard to elected officials).

10 There is no basis for such attacks. AWC's own complaint shows that the Casa Grande P3
11 was signed by the City Manager, attested by the City Clerk, and approved by the City Attorney.
12 AWC Complaint, Ex. 3. Moreover, the P3 was approved by the City Council in a formal resolution
13 bearing the City seal, as well as the signature of the Mayor. *Id.* Such resolutions must be adopted
14 in full public open meetings under Arizona law. *See* A.R.S. 38-431 *et seq.* It is clear then, that the
15 P3s were adopted after a considered review and formal and public procedures by the City.⁸

16 The Commission should grant the cities comity as a fellow government bodies.
17 Considering AWC's attacks on the P3s would necessitate reviewing the considered decisions of
18 other public officials. The Commission should decline AWC's invitation to sit in judgment of
19 these official acts.

20 The argument for comity is only reinforced by the structure of the Arizona Constitution.
21 The framers decided that the Commission should not have jurisdiction over municipal corporations.
22 Ariz. Const. Art. XV § 2. Reviewing the cities' actions on the merits would raise grave
23 constitutional issues which the Commission should avoid. Comity, history and law all suggest that
24 the Commission should not entertain AWC's attacks on the cities.

25
26 ⁸ To the extent that AWC's Complaint also extends to the P3 with the City of Maricopa, the
27 Commission can take official notice that the same procedures were followed by the City of
Maricopa in adopting its P3 with Global.

Moreover, the P3s serve many beneficial purposes. They help the cities cope with growth. Indeed, one of the core purposes of the P3s is to help the cities manage growth in accordance with Arizona's Growing Smarter and Growing Smarter Plus laws. AWC Complaint, Ex. 3, page 1. For example, Global must prepare an annual "Plan for Growth" for the city's planning area. *Id.* at ¶ 10. Global will also share its Geographical Information System ("GIS") with the city. *Id.* ¶ 13. Global is also obligated to support the City's annexation efforts. *Id.* ¶ 14. Global will work with the City to manage and coordinate development. *Id.* In addition, the P3s strongly promote the use of reclaimed water and water conservation measures. *Id.* ¶¶ 8, 12.

By these measures, the cities and Global establish a close working relationship, so that they can both better serve the public. To that end, the P3s include provisions for extensive communication and cooperation between the cities and Global. *Id.* at ¶¶ 1-3, 6. Global is strongly committed to a close and cooperative relationship with the cities. This is in contrast to AWC's well-known history of strained relations with the cities it serves, especially Casa Grande.⁹ Global believes that a cooperative, not hostile, approach is in the public interest.

Moreover, the P3s in no way grant a right to serve any area. The P3s do not create an exclusive relationship, and AWC could enter into such an agreement if it chose to do so.¹⁰ The P3s carefully respect the Commission's authority to designate service areas through the CC&N process. Thus, they only provide for the cities to participate in the CC&N process. *Id.* at ¶ 17(a). This is in sharp contrast to AWC's attempt to limit the Commission's CC&N authority through its so-called

⁹ For example, AWC tried to stop Casa Grande from providing effluent to the Reliant power plant. *See Arizona Water Co. v. City of Casa Grande*, No. CV2000-022448 (Superior Court, Maricopa County), Minute Entry dated March 27, 2002. AWC lost and appealed. The Court of Appeals, in an unpublished opinion, upheld the ruling against AWC. *Arizona Water Co. v. City of Casa Grande*, No. 1 CA-CV 02-0671 and 1 CA-CV 02-0724 (Arizona Court of Appeals), Memorandum Opinion filed October 14, 2003. AWC also lost a related case in federal court. *See Arizona Water Co. v. City of Casa Grande*, 33 Fed. Appx. 309 (9th Cir 2002)(unpublished opinion).

¹⁰ The P3 attached to AWC's Complaint contains no provisions for exclusivity. Further, the fact that the P3s are non-exclusive was made clear at the public hearings on the P3s conducted by the cities of Maricopa and Casa Grande.

1 “first in the field” doctrine. The P3s also carefully respect the Commission’s ratemaking authority,
2 as shown below.

3 **E. The P3 fees are not being paid by ratepayers.**

4 AWC also challenges the fees paid by Global Parent to the Cities of Maricopa and Casa
5 Grande under the P3s. The P3 with Casa Grande provides for Global Parent to pay a fee of \$100 to
6 the city for each residential home connecting to the regulated subsidiaries. AWC Complaint, Ex. 3
7 at ¶ 10. In addition, Global Parent has agreed to pay Casa Grande a fee of 3% (in some cases, 2%)
8 of gross revenues of the regulated subsidiaries within the relevant area. *Id.* at ¶ 4. The P3 does
9 contemplate these fees might be passed on to customers. But the P3 clearly states that this fee
10 cannot be included in the customer’s bill unless it is specifically approved by the ACC. *Id.* The
11 regulated subsidiaries have not requested such approval. Accordingly, there is no charge on
12 customer bills, and thus there is no unauthorized fee as alleged by AWC. Again, the P3 specifically
13 requires ACC approval before any customer is charged. Global Parent has elected, for the time
14 being, to simply pay the fees itself rather than seek such approval. Under the P3, the fees are
15 simply an operating expense of Global Parent. *Id.*

16 In sum, AWC’s broad attack on the integrity of the city officials is unwarranted and should
17 not be considered. Moreover, it is evident on the face of the P3s that they were adopted after
18 through review and proper procedures by the City. A review of the P3s shows that they are in the
19 public interest. The P3 fees are not being charged to ratepayers, and will not be without
20 Commission approval. The P3 fees are thus not unauthorized rates. For these reasons, all claims
21 related to the P3s should be dismissed.

22 **V. AWC has no right to exclude other utilities from serving in Pinal County.**

23 **A. AWC’s rights end at its CC&N boundaries.**

24 AWC claims an expansive right to exclude Global and other utilities from an undefined
25 AWC “master planning area” adjacent to its CC&N. AWC Complaint at ¶ 62. Under this theory,
26 AWC gets to decide who serves an area, not the Commission. The Commission has never
27 recognized such a right. Indeed, just weeks ago, the Commission rejected AWC’s claim to this

1 right in the Woodruff case. See Decision No. 68453 (Feb. 02, 2006). In that case, as here, AWC
2 asserted what it calls the “first in the field doctrine”. See AWC Complaint at ¶ 32. Under this
3 doctrine, the Commission would be forced to grant extensions to operators with notorious
4 operational problems, such as Lester Smith or Johnnie McClain. AWC concocts this doctrine from
5 dicta in various cases, especially *Arizona Corp. Comm’n v. Arizona Water Co.*, 111 Ariz. 74, 76,
6 523 P.2d 505, 507 (1974). But in that case, the Arizona Supreme Court rested its decision not on
7 AWC’s supposed doctrine, but on the public interest test. More recently, the court made it
8 unmistakably clear that the public interest test is the “controlling factor” in CC&N cases. *James P.*
9 *Paul Water Co. v. Arizona Corp. Comm’n*, 137 Ariz. 426, 429, 671 P.2d 404, 407 (1983). Thus,
10 the Commission is not bound to grant new areas to AWC. Instead, the Commission applies the
11 public interest test to determine which applicant, if any, should be granted a new area. AWC’s
12 attempt to tie the Commission’s hands should be rejected.

13 Moreover, AWC’s claim violates a fundamental principle of Arizona law and our free
14 enterprise system – competition. Arizona law tolerates monopolies within CC&N territories.
15 *Arizona Water, supra*. But this is the exception to the rule. See *Mohave Disposal, Inc. v. City of*
16 *Kingman*, 186 Ariz. 343, 348, 922 P.2d 308, 313 (1996)(courts give “deference to free enterprise”).
17 Our Constitution commands that “[m]onopolies and trusts shall never be allowed in this State.”
18 Ariz. Const. Art. XIV § 15. The Arizona Constitutional convention was dominated by
19 progressives. See Marshall Trimble, *Arizona: A Cavalcade of History* at 207 (1989). One of the
20 central elements of the progressive movement was a distrust of monopolies. See e.g. John D.
21 Leshy, *The Making of the Arizona Constitutional Convention*, 20 Ariz. St. L.J. 1, 88-91 (1988).
22 Thus, the history and language of Article XIV § 15 contradict AWC’s attempt to expand its
23 monopoly beyond the strict limits set by the Commission in its CC&N.

24 AWC’s sweeping claim to monopoly rights throughout an undefined internal master
25 planning area is inconsistent with (1) Arizona CC&N law, (2) the Commission’s decision in the
26 Woodruff case; and (3) the fundamental principle of competition enshrined in the Arizona
27 Constitution. This claim should therefore be dismissed.

1 **B. AWC asks the Commission to issue an unconstitutional prior restraint on**
2 **speech within and without AWC's CC&N area.**

3 AWC asks the Commission to prohibit Global from soliciting landowners or other potential
4 customers within AWC's CC&N territory, as well as the undefined AWC master planning area in
5 Pinal County. This demand is an outrageous attack on free speech and the right to petition
6 government. It must be rejected for a host of reasons.

7 **First**, AWC is requesting an unconstitutional prior restraint on speech. The rights to free
8 speech and to petition the government are specifically protected by the United States and Arizona
9 Constitutions. *See* U.S. Const. First Amendment; Ariz. Const., Art. II, §§ 5 and 6. Government
10 restrictions on speech, such as those proposed by AWC, are strongly disfavored. Even if the
11 proposed speech is entirely commercial, it is protected unless it is shown to be deceptive or illegal.
12 *State ex rel. Corbin v. Tolleson*, 160 Ariz. 385, 390, 773 P.2d 490, 495 (App. 1989). A prior
13 restraint of speech, such as that proposed by AWC, faces an even greater burden. "Prior restraints
14 of speech come to court with a heavy presumption of invalidity." *Id.*, 160 Ariz. at 396, 773 P.2d at
15 501.

16 This case is similar to *Mountain States Telephone and Telegraph Co. v. Arizona Corp.*
17 *Comm'n*, 160 Ariz. 350, 357, 773 P.2d 455, 462 (1989). In that case, the Commission imposed a
18 requirement of prior subscription to access so-called "scoop lines". The Arizona Supreme Court
19 ruled that this prior restraint violated the right to speak and publish. *Id.* The Court stated that the
20 "framers of our constitution did not give our judges authority to censor speech or decide how much
21 speech the constitution allows.... Instead, the framers give every person the right to 'freely speak,
22 write and publish' and made judges responsible to uphold and enforce those rights." *Id.* This
23 holding was based on the Arizona Constitution, which the Court found conferred even greater
24 protections than the First Amendment. *Id.*, 160 Ariz. at 354-55, 773 P.2d at 459-60.

25 **Second**, even if AWC's proposal did not constitute an unconstitutional prior restraint on
26 speech, it would still run afoul of the Constitution. Under our system of government, there is a
27 "presumption that the speaker and the audience, not the government, should be left to assess the
value of accurate and nonmisleading information about lawful conduct." *Greater New Orleans*

1 *Broadcasting Assoc. v. United States*, 527 U.S. 173, 195 (1999). The government may restrict
2 commercial speech only under the following circumstances:

- 3 1. At the onset, we must determine whether the expression is protected by the
4 First Amendment. For commercial speech to come within that provision,
5 it at least must concern **lawful activity and not be misleading**.
- 6 2. Next, we ask whether the asserted governmental interest is **substantial**
- 7 3. If both inquiries yield positive answers, we must determine whether the
8 regulation **directly advances** the governmental interest asserted; and
- 9 4. whether it is not **more extensive than is necessary** to serve that interest.

10 *Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of New York*, 447 U.S. 557, 567
11 (1980)(emphasis and numbering added); *see also Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525,
12 554 (2001)(applying *Central Hudson* test).

13 Assuming for the purposes of argument that Global's speech is entirely commercial,
14 AWC's proposed injunction fails the *Central Hudson* test. As shown below, there are numerous
15 lawful grounds for Global to speak to prospective AWC customers. Moreover, the Supreme Court
16 itself has said that a utility consumer "may need information to aid his decision whether or not to
17 use the monopoly service at all, or how much of the service he should purchase." *Central Hudson*,
18 447 U.S. at 567. There can be no doubt that AWC's proposed injunction would include substantial
19 lawful communications. It could only be approved, then, if it passed the remaining three prongs of
20 the *Central Hudson* test.

21 AWC's proposed injunction against Global's speech fails all three remaining prongs of
22 *Central Hudson*. Each of these failings is fatal to AWC's request.

23 With regard to the second prong, it is not clear what substantial governmental interest is at
24 stake. We can only guess that the asserted governmental interest is somehow connected with the
25 CC&N system established by statute. As noted above, Arizona law favors competition, and
26 tolerates utility monopolies only under strict limits and controls.

27 Regarding the third prong, whatever the asserted governmental interest, it is not directly
advanced by the proposed injunction. For example, the proposed injunction would not apply to
other utility providers, either private or municipal. The "directly advance" prong is not satisfied
"by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on

1 commercial speech must demonstrate that the harms it recites are real and that its restriction will in
2 fact alleviate them to a material degree.” *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 626
3 (1995)(citations omitted). AWC does not even attempt to allege facts that would satisfy this prong.

4 AWC does no better with the final prong. To satisfy this prong, a restriction must be
5 “demonstrate narrow tailoring” so that it is “in proportion to the interest served” *Greater New*
6 *Orleans*, 527 U.S. at 188. AWC’s proposed injunction is notable, not for its narrowness, but for its
7 breadth. It includes vague and expansive terms like “future customers” and “prospective business
8 relationships” and “master planning area”. AWC’s proposed injunction thus fails each prong of
9 *Central Hudson* and it should be rejected.

10 AWC’s proposed injunction is an unconstitutional prior restraint under *Mountain States*,
11 and it fails the *Central Hudson* test as well. It therefore runs counter to both the Arizona and
12 United States Constitutions, and it must be soundly rejected.

13 **Third**, AWC requests that the Commission ban such speech even outside of AWC’s CC&N
14 territory. As explained above, AWC has no rights outside of its CC&N territory. AWC is trying to
15 extend its monopoly to a vast, undefined territory. Yet under Arizona law, AWC’s monopoly is
16 strictly limited by its CC&Ns.

17 **Fourth**, there are a myriad of legitimate reasons for Global to talk to potential customers.
18 Most importantly, AWC does not offer wastewater and reclaimed water services, and its CC&N
19 does not cover such services. Thus, Global is free to talk to potential customers about such
20 services. Moreover, nothing prevents potential customers and Global from attempting to reach a
21 reasonable accommodation with AWC, subject to the Commission’s discretion, to transfer part of
22 AWC’s CC&N to Global.

23 **Fifth**, potential customers can petition the Commission to be deleted from the AWC
24 CC&N. The Commission will evaluate such requests using the analysis in *James P. Paul*. For
25 example, landowners have a legitimate concern with being provided adequate service. If they were
26 trapped in the territory of a failing or inadequate provider, they could certainly petition the ACC to
27 be deleted. Nothing prevents Global from encouraging or supporting such requests. Indeed, the

1 right to request action from government lies at the very core of the free speech rights which we all
2 hold so dear.

3 **Finally**, AWC does not allege that Global has actually attempted to serve anyone in AWC's
4 CC&N area. Nor does AWC allege that Global has requested a CC&N for any of AWC's territory.
5 Indeed, Global has carefully avoided such actions. There are a number of perfectly legitimate
6 reasons for Global to talk to potential customers in AWC's territory, and prohibiting such speech
7 would violate bedrock constitutional principles. Accordingly, AWC's CC&N claims should be
8 dismissed.

9 **VI. Count Two fails the statutory requirements for rate-related complaints.**

10 AWC also fails to meet the statutory requirements for rate complaints relating to Count Two. As
11 explained above, AWC's Count Two fails allege facts sufficient to support Count Two, which concerns
12 rate matters. Yet even if AWC had alleged facts adequate to support its rate claims, those claims would
13 still fail because AWC does not meet the requirements of the rate complaint statute. Under A.R.S. § 40-
14 246(A), the Commission cannot entertain a rate-related complaint (except a complaint made on its own
15 motion) unless the complaint is: (1) "signed by the mayor or a majority of the legislative body of the city
16 or town" or (2) the complaint is signed by "not less than twenty-five consumers or purchasers, or
17 prospective consumers or purchasers, of the services." A.R.S. § 40-246(A). AWC's complaint fails to
18 satisfy either one of these options, and accordingly Count Two should be dismissed.

19 **VII. Conclusion.**

20 The Unregulated Global Entities do not sell water or wastewater service, and they do not
21 meet the legal test needed to be considered "alter egos" of the regulated subsidiaries. The ICFAs
22 are unlike hook-up fees in a number of respects, and they serve a number of salutary purposes, such
23 as allowing acquisitions, isolating the regulated subsidiaries from risk, reducing excessive CIAC,
24 and enabling regional planning and economies of scale. Moreover, the ICFAs will be reviewed in
25 the pending generic financing docket. Reviewing the P3s would require the Commission to sit in
26 judgment of the acts of other public officials. Further, the P3 fees are not being passed along to
27 customers, and will not be until the Commission grants approval. AWC has no rights beyond its

1 CC&N territory, and even within it, Global can legitimately speak to potential customers about a
2 number of topics, including providing wastewater service. In addition, County Two does not meet
3 the requirements of A.R.S. § 40-246(A) for rate complaints.

4 For these reasons, the Commission should dismiss AWC's complaint under A.A.C. R14-3-
5 106(H) and Arizona R.Civ.Pro. 12(b), incorporated by reference in A.A.C. R14-3-101(A) and R14-
6 3-106(K). Global's formal answer follows, in accordance with A.A.C. R14-3-106(H).

7 **VIII. Answer.**

8 Respondents (collectively, "Global")¹¹ answer the Complaint of Arizona Water Company
9 ("AWC") as follows:

10 1. Regarding Paragraph 1, Global admits that Global Water Resources, LLC is a
11 Delaware LLC and denies the remaining allegations.

12 2. Regarding Paragraph 2, Global admits that Global Water Resources, Inc. is a
13 Delaware corporation and denies the remaining allegations. Global further alleges that Global
14 Water Resources, Inc. has recently changed its name to "Global Water, Inc." and is in good
15 standing with the State of Delaware.

16 3. Regarding Paragraph 3, Global admits that GWM is a Delaware LLC and denies the
17 remaining allegations.

18 4. Regarding Paragraph 4, Global denies all allegations, and alleges that SCWC and
19 PVUC are wholly-owned subsidiaries of Global Water Resources, LLC.

20 5. Regarding Paragraph 5, Global admits that there have been some discussions and
21 negotiations with various landowners, and denies the remaining allegations.

22 6. Regarding Paragraph 6, Global admits that there have been some discussions and
23 negotiations with various landowners, and denies the remaining allegations.

24 7. Regarding Paragraph 7, Global acknowledges that AWC requests the indicated relief
25 and denies that such relief is warranted.

26 _____
27 ¹¹ Except as otherwise defined herein, each defined term has the meaning given it in AWC's
Complaint.

1 8. Regarding Paragraph 8, Global acknowledges that AWC requests the indicated relief
2 and denies that such relief is warranted.

3 9. Regarding Paragraph 9, Global admits the allegations of this paragraph.

4 10. Regarding Paragraph 10, Global admits that AWC has provided such services to
5 parts of the areas described for more than 50 years. Global is without knowledge or information
6 sufficient to form a belief as to the CC&Ns of AWC and accordingly denies the allegations relating
7 thereto. Global alleges that AWC's CC&Ns, if any, are limited to the specific locations described
8 in such CC&Ns, and that said CC&Ns do not apply to all of the amorphous "areas" alleged by
9 AWC. Global denies the remaining allegations of the Complaint.

10 11. Global denies all allegations in Paragraph 11, and alleges that Global's current
11 address is 21410 North 19th Avenue, Suite 201, Phoenix Arizona 85027.

12 12. Regarding Paragraph 12, Global denies the allegations of the first sentence, and
13 alleges that SCWC is a wholly-owned subsidiary of Global Water Resources, LLC. Global admits
14 the allegations of the second sentence. Global denies the allegations of the third sentence, and
15 alleges that the current address of SCWC is 21410 North 19th Avenue, Suite 201, Phoenix Arizona
16 85027.

17 13. Regarding Paragraph 13, Global denies the allegations of the first sentence, and
18 alleges that PVUC is a wholly-owned subsidiary of Global Water Resources, LLC. Global admits
19 the second sentence. Global denies the third sentence and alleges that the current address of PVUC
20 is 21410 North 19th Avenue, Suite 201, Phoenix Arizona 85027.

21 14. Regarding Paragraph 14, Global admits that GW-SCW is a recently-formed Arizona
22 corporation, and that GW-SCW is a wholly-owned subsidiary of Global Water, Inc., a Delaware
23 Corporation. Global denies the remaining allegations. Global alleges that the "Global Water, Inc."
24 which owns GW-SCW was known as "Global Water Resources, Inc." until recently, and that said
25 company is and at all relevant times was in good standing with the State of Delaware, and that said
26 company is a completely different company than any dissolved Delaware corporation by the same
27

1 name. Global further alleges that the address of GW-SCW is 21410 North 19th Avenue, Suite 201,
2 Phoenix Arizona 85027.

3 15. Regarding Paragraph 15, Global admits that GW-PVU is a recently-formed Arizona
4 corporation, and that GW-PVU is a wholly-owned subsidiary of Global Water, Inc., a Delaware
5 Corporation. Global denies the remaining allegations. Global alleges that the "Global Water, Inc."
6 which owns GW-SCW was known as "Global Water Resources, Inc." until recently, and that said
7 company is and at all relevant times was in good standing with the State of Delaware, and that said
8 company is a completely different company than any dissolved Delaware corporation by the same
9 name. Global further alleges that the address of GW-SCW is 21410 North 19th Avenue, Suite 201,
10 Phoenix Arizona 85027.

11 16. Regarding Paragraph 16, Global denies that the Commission has jurisdiction over
12 the Global Entities which do not hold CC&Ns from the Commission, and admits the remaining
13 allegations.

14 17. Global admits the allegations of Paragraph 17, except for the word "properly", as to
15 which Global is without knowledge or information sufficient to form a belief and accordingly
16 denies the allegations relating thereto.

17 18. Regarding Paragraph 18, Global is without knowledge or information sufficient to
18 form a belief as to the allegations and accordingly denies same, except that Global admits that
19 AWC is an Arizona public service corporation.

20 19. Regarding Paragraph 19, Global denies that AWC has 22 water systems, and alleges
21 that AWC has 18 water systems, as determined by the Commission in its Decision No. 68302
22 (November 14, 2005) at page 2. Global is without knowledge or information sufficient to form a
23 belief as to the remaining allegations accordingly denies same.

24 20. Regarding Paragraph 20, Global is without knowledge or information sufficient to
25 form a belief as to the allegations concerning the amount of water AWC produces or the amount of
26 its gross utility plant, and accordingly denies same. Global admits the remaining allegations of
27 Paragraph 20.

1 21. Regarding Paragraph 21, Global denies any implication that AWC's CC&Ns extend
2 throughout the listed communities. Global also alleges that some of these systems are consolidated
3 for ratemaking purposes, and such consolidated systems are considered to be one system by the
4 Commission. Global admits that AWC operates water utility systems in portions of the
5 communities listed in Paragraph 21. Global is without knowledge or information sufficient to form
6 a belief as to the remaining allegations and accordingly denies said allegations.

7 22. Global denies the allegations of Paragraph 22 of the Complaint. Global also alleges
8 that the term "operate" is vague and it is unclear whether this term includes the lawful interactions
9 between a regulated utility and its parent corporations or affiliates, and accordingly Global denies
10 all allegations related to this term.

11 23. Regarding Paragraphs 23 and 24, Global alleges that the terms "elsewhere" and
12 "exert control" are vague and accordingly all allegations relating to such terms are denied. Global
13 alleges that PVUC does not merely provide "sewer" service, but instead provides a state-of-the-art
14 wastewater collection and treatment service, as well as providing extensive reclaimed water
15 services, and that SCWC and PVUC together provide a comprehensive, integrated solution for the
16 water, wastewater, and reclaimed water needs of the public within their service areas, thereby
17 promoting sustainable and wise use of Arizona's precious and limited water resources. Global
18 admits the remaining allegations of Paragraphs 23 and 24.

19 24. Global denies the allegations of Paragraph 25.

20 25. Global acknowledges the Notice of Intent and Decision No. 67830, and alleges that
21 these documents speak for themselves, and accordingly denies all allegations relating to them.

22 26. Global denies the allegations of Paragraph 27. Global further alleges that in the near
23 future one or more of its regulated subsidiaries will become Class A utilities and that Global will
24 therefore become subject to the Commission's Holding Company and Affiliated Interests Rules,
25 A.A.C. R14-2-801 *et seq.* Global further alleges that in enacting such rules, the Commission
26 determined the proper amount of oversight for holding companies of Class A utilities, and that
27 further regulation of holding companies is unwarranted. Global further alleges that AWC has its

1 own "web of interlocking companies." Upon information and belief, AWC is owned by Utility
2 Investment Company, a foreign corporation not authorized to conduct business in Arizona. Upon
3 information and belief, Utility Investment Company is owned by yet another holding company,
4 which in turn is owned by unknown persons. Global further alleges that, in fairness, any actions
5 taken with respect to the Global Entities should also be taken for AWC's maze of holding
6 companies. Global further alleges that use of holding companies and other affiliates is a common
7 and useful aspect of modern business life.

8 27. Regarding Paragraph 28, Global denies the phrase "unauthorized scheme" and
9 admits the remaining allegations.

10 28. Global alleges that the ICFAs speak for themselves, and accordingly denies the
11 allegations of Paragraphs 29 through 34.

12 29. Answering paragraph 35, Global denies that any ICFAs are not recorded (although
13 some may not have been recorded at the time AWC filed its Complaint), and admits the remaining
14 allegations of Paragraph 35.

15 30. Global denies the allegations of Paragraphs 36 and 37.

16 31. Global alleges that Commission Decision No. 61943 (September 17, 1999) speaks
17 for itself and accordingly denies the allegations of Paragraph 38.

18 32. Global denies the allegations of Paragraph 39.

19 33. Regarding Paragraph 40, Global alleges that the term "various municipalities" is
20 vague and accordingly denies this allegation. Global admits the remaining allegations of Paragraph
21 40. Global alleges that it has entered into P3s with the Cities of Maricopa and Casa Grande.

22 34. Global alleges that the P3s speak for themselves, and accordingly denies the
23 allegations of Paragraph 41.

24 35. Regarding Paragraph 42, Global admits that AWC has interacted with Casa Grande
25 and Pinal County, although such interactions are often contentious and litigious. Global denies the
26 remaining allegations of Paragraph 42.

1 36. Regarding Paragraph 43, Global re-alleges its response to paragraphs 1 through 42
2 as forth above.

3 37. Global admits the allegations of Paragraph 44.

4 38. Global alleges that the referenced legal materials speak for themselves, and
5 accordingly denies the allegations of Paragraph 45.

6 39. Global denies the allegations of Paragraphs 46-49.

7 40. Regarding Paragraph 50, Global re-alleges its responses to Paragraphs 1 through 49
8 as set forth above.

9 41. Global denies the allegations of Paragraph 51.

10 42. Regarding Paragraph 52, Global admits that the Commission has prescribed the
11 rates of SCWC and PVUC. Global denies the remaining allegations.

12 43. Global denies the allegations of Paragraphs 53 through 56.

13 44. Regarding Paragraph 57, Global re-alleges its response to Paragraphs 1 through 56,
14 as set forth above.

15 45. Regarding Paragraph 58, Global alleges that the terms and conditions of AWC's
16 CC&N's, if any, are set forth by the Commission in the CC&Ns, and that the legal effects of such
17 CC&Ns are governed by Arizona law, and Global accordingly denies the phrase "which are
18 identified and protected from invasion, bypass and unlawful competition". Global is without
19 knowledge or information sufficient to form a belief regarding the remaining allegations, and
20 accordingly denies them.

21 46. Regarding Paragraph 59, Global admits the legal description corresponds to the
22 Commission's records. Global is without knowledge or information sufficient to form a belief as to
23 remaining allegations and accordingly denies them.

24 45. Global denies the allegations of Paragraphs 60 through 62.

25 46. Global denies each and every allegation not specifically admitted above.

26 **Affirmative Defenses**


27 47. Global asserts the following affirmative defenses:

- 1 A. AWC's claims are barred by estoppel, laches, acquiescence, or waiver.
- 2 B. Global lacks standing to assert Counts One and Two of its Complaint.
- 3 C. The Commission lacks jurisdiction over the Global entities which do not
- 4 hold a CC&N issued by the Commission.
- 5 D. The Complaint fails to state a claim for which relief can be granted.
- 6 E. The claims regarding the ICFAs are encompassed in subject of a generic
- 7 docket pending before the Commission, and thus should not be considered in this docket.
- 8 F. To the extent that the Commission finds that Count Two raises in whole or
- 9 part any claims which relate to the Commission's ratemaking powers, AWC has failed to satisfy the
- 10 requirements of A.R.S. § 40-246(A) regarding rate-related complaints.
- 11 G. The relief requested with regard to Count Three would violate the freedom
- 12 of speech and petition guaranteed by the Constitutions of the United States of America and the State
- 13 of Arizona.
- 14 H. The relief requested with regard to Count Three would violate Federal and
- 15 Arizona anti-trust law (both statutory and common law) as well as Article XIV § 15 of the Arizona
- 16 Constitution.
- 17 I. Considering the claims regarding the P3s would violate the comity which is
- 18 owed the cities that approved the P3s.
- 19 J. The Commission is forbidden from exercising jurisdiction over municipal
- 20 corporations under Article XV, Section 2 of the Arizona Constitution, and considering the claims
- 21 regarding the P3s would require the Commission to exercise jurisdiction over the municipal
- 22 corporations that are parties to the P3s.
- 23 K. Global reserves the right to raise any other defenses which are shown to be
- 24 available in this matter, including without limitation any defenses which become apparent during
- 25 the course of discovery.
- 26 48. Global denies that AWC is entitled to any relief under its Complaint.
- 27

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1 RESPECTFULLY SUBMITTED this 24th day of April 2006.

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4
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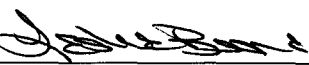
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Exhibit “A”

EXHIBIT A

Water Utility Holding Companies in Arizona (excluding Global)

Regulated Utilities	Holding Companies	Other Affiliates	Sources
Arizona-American Water Company	American Water Thames Water RWE Group	American Water Resources, Inc. American Water Works Services Company American Water Capital Corp.	Various Decisions, especially Decision No. 65453 (December 12, 2002).
Arizona Water Company	Utility Investment Company, Inc. United Resources, Inc.	San Gabriel Valley Water Company Rosemead Properties, Inc.	Decision No. 68118 (September 9, 2005); Decision No. 67274 (October 5, 2004); California Public Utilities Commission Decision 92-04- 034 (April 8, 1992)
Picacho Water Company Picacho Sewer Company Pima Water Company Pima Sewer Company Ridgeview Utility Company Lago Del Oro Water Company Saddlebrooke Utility Company Quail Creek Water Company Santa Rosa Water Company Santa Rosa Utility Company	Robson Communities, Inc.	Various development entities	See Decision No. 67670 (March 9, 2005) and Decision No. 68243 (October 25, 2005) for listings of these companies.

Litchfield Park Service Co. Rio Rico Utilities Bella Vista Water Company Black Mountain Sewer Corp. Gold Canyon Sewer Co.	Algonquin Water Resources of America, Inc. Algonquin Power Income Fund	Algonquin Water Services and 10 other water and wastewater companies in Illinois, Missouri, and Texas	See Direct Testimony of Michael D. Weber in Docket No. 06-0015
Chaparral City Water Co.	American States Water Co.	Southern California Water Co.	See Decision No. 68176 (Sept. 30, 2005)
Pine Water Co. Strawberry Water Co. Payson Water Co. Tonto Basin Water Co. Navajo Water Co. Brooke Water, LLC Circle City Water Co.	Brooke Utilities, Inc.	Brooke Resources, LLC	See Decision No. 60972 (June 19, 1998) and Decision No. 68246 (October 25, 2005) and Hardcastle Direct Testimony in the Pine Water 2003 Rate Case
Pine Meadows Utilities, LLC Sweetwater Creek Utilities Bensch Ranch Utilities Cross Creek Water Co. Verde Santa Fe Wastewater Co. Coronado Utilities, Inc. Balterra Sewer Corp.	Pivotal Utility Management, LLC	Santec Corp.	See Balterra CC&N Application (Docket No. 05- 0586) and Coronado CC&N Application (Docket No. 05- 0086)

Water Utility of Greater Buckeye, Inc. Water Utility of Greater Tonopah, Inc. Water Utility of Northern Scottsdale, Inc. Valencia Water Company Willow Valley Water Company	West Maricopa Combine, Inc.	Water Utility Administrative Services, Inc.	See www.wmcwater.com
Sonoita Valley Water Company Mescal Lakes Water System Clear Springs Utility Co. Sandario Water Company	Southwestern Utility Management		Various Decisions

Exhibit "B"



GLOBAL WATER

Corporate Structure as Alleged by AWC

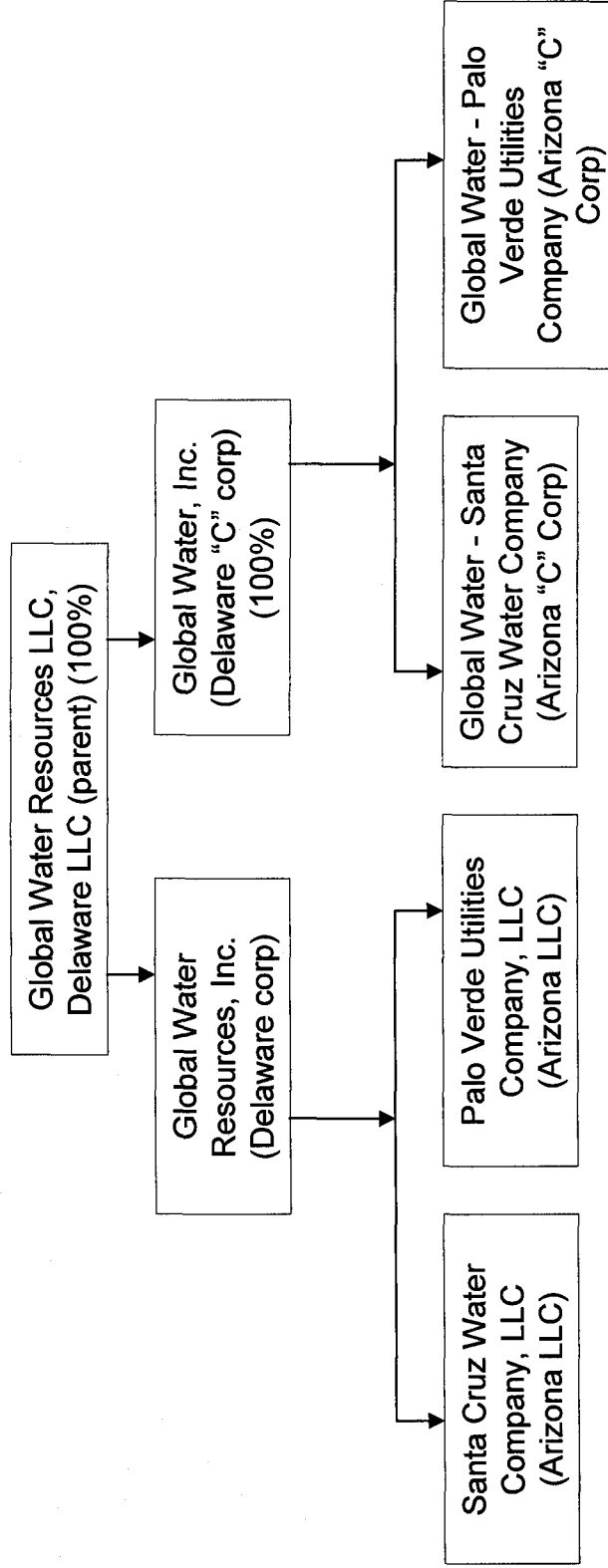


Exhibit "C"



GLOBAL WATER

Actual Corporate Structure

